

RANDOLPH GAW (S.B. #223718)
rgaw@gawpoe.com
MARK POE (S.B. #223714)
mpoe@gawpoe.com
SAMUEL SONG (S.B. #245007)
ssong@gawpoe.com
VICTOR MENG (S.B. #254102)
vmeng@gawpoe.com
FLORA VIGO (S.B. #239643)
fvigo@gawpoe.com
GAW | POE LLP
4 Embarcadero, Suite 1400
San Francisco, CA 94111
Telephone: (415) 766-7451
Facsimile: (415) 737-0642

Class Counsel

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

ADTRADER, INC., et al.,

Case No. 5:17-CV-07082-BLF

Plaintiffs,

V.

GOOGLE LLC,

Defendant.

**PLAINTIFF SPECIALIZED
COLLECTIONS BUREAU'S MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF**

Judge: Hon. Beth L. Freeman
Hearing Date: August 25, 2022
Time: 9:00 a.m.
Courtroom: 3

TABLE OF CONTENTS

| | |
|--|----|
| NOTICE OF MOTION AND MOTION | 1 |
| I. INTRODUCTION AND BACKGROUND..... | 3 |
| A. Plaintiff's Claims. | 3 |
| B. Proceedings to Date. | 4 |
| C. Summary Judgment..... | 5 |
| D. Settlement..... | 5 |
| E. Settlement Payments to AdWords Class Members..... | 6 |
| F. Notice and Objection Procedures, and Renewed Opt-Out Opportunity. | 8 |
| G. Content of Notice and Release of Claims. | 8 |
| H. Service Award and Attorney's Fees, Costs, and Expenses..... | 9 |
| II. ARGUMENT | 10 |
| A. Legal Standard. | 10 |
| B. The Parties' Settlement Meets the Standard for Preliminary Approval..... | 11 |
| 1. SCB and Class Counsel have adequately represented the class. | 11 |
| 2. The proposed Settlement was negotiated at arm's length. | 12 |
| 3. The relief provided for the class is adequate. | 13 |
| i. The costs, risks, and delay of trial and appeal..... | 14 |
| ii. The method of distributing relief and processing claims. | 15 |
| iii. The terms and timing of the proposed attorneys' fees award. | 17 |
| iv. Statement of agreements required to be identified..... | 18 |
| 4. The proposed settlement treats class members equitably relative to each other. . | 20 |
| C. The Court Should Approve the Proposed Class Notice. | 21 |
| D. The Court Should Set a Schedule Toward Final Approval of the Parties' Settlement..... | 22 |
| CONCLUSION..... | 22 |

TABLE OF AUTHORITIES

| | Page(s) |
|---|----------------|
| Cases | |
| <i>Baird v. BlackRock Institutional Tr. Co., N.A.</i> , No. 17-CV-01892-HSG, 2021 WL 5991060 (N.D. Cal. July 12, 2021) | 16 |
| <i>Birch v. Off. Depot, Inc.</i> , 06-CV-1690 DMS, 2007 WL 9776717 (S.D. Cal. Sept. 28, 2007) | 20 |
| <i>Carlotti v. ASUS Computer Int'l</i> , No. 18-CV-03369-DMR, 2020 WL 3414653 (N.D. Cal. June 22, 2020)..... | 22 |
| <i>In re: Cathode Ray Tube (Crt) Antitrust Litig.</i> , No. C-07-5944 JST, 2016 WL 3648478 (N.D. Cal. July 7, 2016), dismissed <i>sub nom. In re Cathode Ray Tube (CRT) Antitrust Litig.</i> , No. 16-16368, 2017 WL 3468376 (9th Cir. Mar. 2, 2017) | 13 |
| <i>Destefano v. Zynga, Inc.</i> , No. 12-cv-04007-JSC, 2016 WL 537946 (N.D. Cal. Feb. 11, 2016) | 14 |
| <i>Downey Surgical Clinic, Inc. v. Optuminsight, Inc.</i> , No. CV09-5457 PSG (JCX), 2016 WL 5938722 (C.D. Cal. May 16, 2016) | 16 |
| <i>In re Dynamic Random Access Memory (DRAM) Antitrust Litig.</i> , No. 06-cv-4333-PJH, 2013 WL 12333442 (N.D. Cal. Jan. 8, 2013)..... | 17 |
| <i>Edwards v. Nat'l Milk Producers Fed'n</i> , No. 11-CV-04766-JSW, 2017 WL 3623734 (N.D. Cal. June 26, 2017), <i>aff'd</i> <i>sub nom. Edwards v. Andrews</i> , 846 F. App'x 538 (9th Cir. 2021) | 13 |
| <i>Fraley v. Facebook, Inc.</i> , 966 F. Supp. 2d 939 (N.D. Cal. 2013) | 14 |
| <i>Free Range Content, Inc. v. Google, LLC</i> , No. 14-CV-02329-BLF, 2019 WL 1299504 (N.D. Cal. Mar. 21, 2019) | 10, 13, 21 |
| <i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)..... | 10, 11, 12, 14 |
| <i>In re Heritage Bond Litig.</i> , 546 F.3d 667 (9th Cir. 2008)..... | 10 |
| <i>Kakani v. Oracle Corp.</i> , No. 06-cv-06493-WHA, 2007 WL 1793774 (N.D. Cal. June 19, 2007) | 16 |
| <i>In re Lenovo Adware Litig.</i> , No. 15-MD-02624-HSG, 2018 WL 6099948 (N.D. Cal. Nov. 21, 2018) | 10 |

| | | |
|----|--|--------|
| 1 | <i>McDonald v. CP OpCo, LLC,</i> No. 17-CV-04915-HSG, 2019 WL 2088421 (N.D. Cal. May 13, 2019)..... | 21 |
| 2 | | |
| 3 | <i>In re Myford Touch Consumer Litig.,</i> No. 13-CV-03072-EMC, 2018 WL 10539266 (N.D. Cal. June 14, 2018)..... | 16 |
| 4 | | |
| 5 | <i>Nachsin v. A.O.L., LLC,</i> 663 F.3d 1034 (9th Cir. 2011)..... | 21 |
| 6 | | |
| 7 | <i>In re Nexus 6P Prod. Liab. Litig.,</i> No. 17-CV-02185-BLF, 2019 WL 6622842 (N.D. Cal. Nov. 12, 2019)..... | 22 |
| 8 | | |
| 9 | <i>In re Omnivision Techs., Inc.,</i> 559 F. Supp. 2d 1036 (N.D. Cal. 2008) | 14 |
| 10 | | |
| 11 | <i>Parker v. Cherne Contracting Corp.,</i> No. 18-CV-01912-HSG, 2021 WL 3209825 (N.D. Cal. July 29, 2021) | 20 |
| 12 | | |
| 13 | <i>Perkins v. LinkedIn Corp.,</i> No. 13-cv-04303-LHK, 2016 WL 613255 (N.D. Cal. Feb. 16, 2016)..... | 14 |
| 14 | | |
| 15 | <i>Perks v. Activehours, Inc.,</i> No. 5:19-CV-05543-BLF, 2021 WL 1146038 (N.D. Cal. Mar. 25, 2021)..... | 11, 12 |
| 16 | | |
| 17 | <i>Rabin v. PricewaterhouseCoopers LLP,</i> No. 16-CV-02276-JST, 2021 WL 837626 (N.D. Cal. Feb. 4, 2021)..... | 13 |
| 18 | | |
| 19 | <i>Redwen v. Sino Clean Energy, Inc.,</i> 11-cv-3936-PA-(SSX), 2013 WL 12303367 (C.D. Cal. July 9, 2013)..... | 17 |
| 20 | | |
| 21 | <i>Rodriguez v. Nike Retail Servs., Inc.,</i> No. 14-CV-01508-BLF, 2022 WL 254349 (N.D. Cal. Jan. 27, 2022) | 18 |
| 22 | | |
| 23 | <i>Rodriguez v. West Pub'g Corp.,</i> 563 F.3d 948 (9th Cir. 2009)..... | 10 |
| 24 | | |
| 25 | <i>Shahar v. Hotwire, Inc.,</i> No. 12-CV-06027-JSW, 2014 WL 12647737 (N.D. Cal. July 25, 2014)..... | 13 |
| 26 | | |
| 27 | <i>In re Syncor ERISA Litig.,</i> 516 F.3d 1095 (9th Cir. 2008)..... | 10 |
| 28 | | |
| | <i>In re Tableware Antitrust Litig.,</i> 484 F. Supp. 2d 1078 (N.D. Cal. 2007) | 10, 13 |
| | | |
| | <i>Taylor v. Shutterfly, Inc.,</i> No. 5:18-CV-00266-BLF, 2021 WL 5810294 (N.D. Cal. Dec. 7, 2021) | 21 |
| | | |

1 **Statutes**

2 Fed. R. Civ. P. 23 *passim*

3 **Other Authorities**

4 *Manual for Complex Litigation*, § 13.14 (4th ed. 2004) 10

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF**
 2 **SETTLEMENT**

3 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

4 **PLEASE TAKE NOTICE** that on August 25, 2022, at 9:00 a.m., or as soon thereafter as
 5 this motion may be heard in the above-entitled Court, located at 280 South 1st Street, San Jose,
 6 CA 95113, Courtroom 3, Plaintiff Specialized Collections Bureau, Inc. (“SCB”) will and hereby
 7 does move the Court, pursuant to Federal Rule of Civil Procedure 23(e), for an order (1)
 8 preliminarily approving the Settlement¹ it has reached with Defendant Google LLC; (2)
 9 approving the Parties’ proposed Notice program, including as set forth in the attachments to the
 10 Declaration of Steven Weisbrot Regarding Settlement Notice Plan and Claims Processing
 11 (“Weisbrot Declaration”), and directing Notice of the proposed Settlement to the AdWords Class;
 12 (3) appointing Angeion Group as the Settlement Administrator and directing it to carry out the
 13 duties assigned to it in the Settlement Agreement; (4) approving the Parties’ proposed Claim
 14 Form (as attached to the Weisbrot Declaration), and the proposed procedures for submitting
 15 Claims, objecting to the Settlement, and requesting exclusion; (5) staying all non-settlement-
 16 related proceedings in the this case pending final approval; and (6) setting the following schedule:

| | |
|--|---|
| Notice Date | No later than 60 days after Preliminary Approval |
| Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards | No later than 30 days prior to the Objection and Exclusion Deadline |
| Claims Deadline | 60 days after Notice Date |
| Opt-Out Deadline | 60 days after Notice Date |
| Deadline for Objection to Settlement | 60 days after Notice Date |
| Motion for Final Approval | At least 14 days before Final Fairness Hearing |

27

 28 ¹ Unless otherwise indicated by context, all capitalized terms in this motion refer to capitalized terms in the Parties’ Settlement Agreement.

| | |
|-------------------------|--|
| Responses to Objections | At least 14 days before Final Fairness Hearing |
| Final Fairness Hearing | Approximately 150 days after Preliminary Approval, subject to the Court's availability |

This motion is based upon this notice of motion and motion, the attached memorandum of points and authorities, the Declarations of Randolph Gaw, Steven Weisbrot, and Hon. Jeremy Fogel (Ret.), all papers and pleadings on file with the Court, and such other argument and materials as may be presented to the Court at the hearing on this motion.

STATEMENT OF RELIEF SOUGHT

SCB, on behalf of itself and the AdWords Class, moves for preliminary approval of a Settlement regarding the AdWords Class's allegation that Google wrongfully failed to pay refunds or credits for invalid advertising traffic whose monetary value Google had debited from publishers during the applicable limitations period. The Settlement covers the claims of these AdWords advertisers whose accounts were subject to the Google Inc. Advertising Program Terms for the United States ("Terms") and who opted out of the arbitration clause of the Terms.

The Settlement provides for a non-reversionary sum of \$7 million to satisfy these claims, payable on a claims-made basis, under which each Claimant with a Valid Claim will receive a proportional share of the Net Settlement Fund based on its AdWords advertising spend on AdX publishers' webpages during the relevant limitations period as a percentage of the total such spend for all Claimants with Valid Claims. The Settlement further includes payment for the costs of administration and notice; a Class Representative Service Award; and Plaintiff's reasonable attorneys' fees, costs, and expenses. The Parties reached this Settlement after vigorous discovery and litigation, and numerous direct and mediated settlement conversations and exchanges of information. Regarding Notice, the Parties have agreed to a strong, comprehensive program whose centerpiece is Direct Email Notice, coupled with Postcard Notice sent by U.S. Mail. An identical notice program was undertaken in conjunction with issuing notice regarding this Court's certification order, and it proved highly effective. (*See* Dkt. No. 346-1 (Settlement Administrator reporting notice effectuated on 777,310 out of 792,612 identified Class members).) As Plaintiff

1 demonstrates below, the Settlement warrants preliminary approval and presentation to the
 2 AdWords Class.

3 STATEMENT OF ISSUES TO BE DECIDED

4 1. Whether the Court should preliminarily approve the Parties' Settlement, which
 5 followed extensive motion practice and discovery; is the product of intense, arm's-length
 6 negotiations, including mediation conducted by the Honorable Jeremy Fogel, an experienced,
 7 esteemed mediator who is also a former District Court Judge; and which provides valuable
 8 monetary compensation to the certified AdWords Class following implementation of a
 9 comprehensive Notice program.

10 2. Whether the Court should approve Angeion Group as Settlement Administrator;
 11 approve the Parties' proposed Claim Form; approve the Claim and Objection and exclusion
 12 procedures set forth in the Settlement Agreement; and schedule a Final Fairness Hearing as well
 13 as a hearing on Plaintiff's motion for Service Award and recovery of Plaintiff's attorney's fees,
 14 costs, and expenses.

15 MEMORANDUM OF POINTS AND AUTHORITIES

16 I. INTRODUCTION AND BACKGROUND

17 A. Plaintiff's Claims.

18 Plaintiffs filed a proposed class action on December 13, 2017, alleging that Google
 19 wrongfully failed to provide refunds or credits to advertisers who used what was then known as
 20 its DoubleClick Bid Manager ("DBM") platform (now "Display & Video 360") for invalid
 21 activity that Google detected. Plaintiffs subsequently extended their claims to include advertisers
 22 who used Google's AdWords platform as well, among others. (Dkt. Nos. 1, 29, 72 ("SAC").)
 23 Google's DoubleClick Ad Exchange ("AdX") is a Google-owned and operated advertising
 24 exchange serving both advertisers and website publishers. Website publishers using AdX can
 25 monetize their inventory and be matched via an auction format with online advertisers looking to
 26 bid on that inventory. Google pays publishers a portion of the revenues Google receives for ads
 27 displayed on the publisher's websites. (Dkt. No. 154 ("Answer") ¶ 23.) AdWords is a service
 28 that allows advertisers to run both display and search advertising campaigns. AdWords

1 advertisers could buy inventory from AdX publishers under the AdWords default settings.
 2 (Answer ¶ 27.) Plaintiff SCB was an AdWords advertiser. (*Id.* ¶ 57.) Google attempts to detect
 3 invalid ad traffic (“IVT”) and issue credits or refunds to advertisers for such traffic. (*Id.* ¶¶ 41-
 4 45.) On behalf of itself and the AdWords Class, Plaintiff SCB alleges Google breached the
 5 AdWords Agreement and violated California’s False Advertising Law (“FAL”) and Unfair
 6 Competition Law (“UCL”) by failing to fully refund or credit advertisers for invalid ad traffic even
 7 though it had contemporaneously withheld payment to AdX publishers for that same traffic.
 8 (SAC ¶¶ 157-248.)

9 **B. Proceedings to Date.**

10 Google’s first motion to dismiss Plaintiffs’ complaint was mooted by Plaintiffs’ Amended
 11 Complaint, which Google also moved to dismiss. The Court granted in part and denied in part
 12 Google’s second motion. (Dkt. Nos. 36, 39, 51, 63.) On August 13, 2018, Plaintiffs filed the
 13 operative Second Amended Complaint, as to which the Court subsequently granted in part and
 14 denied in part Google’s third motion to dismiss. (Dkt. No. 72, 76, 131.)

15 On March 13, 2020, the Court certified under Rule 23(b)(3) Plaintiff’s proposed
 16 AdWords Class, membership in which is defined as follows:

17 All persons and entities: (1) whose Google AdWords advertiser accounts were
 18 subject to the Google Inc. Advertising Program Terms for the United States; (2)
 19 who were charged by Google through their AdWords accounts for clicks or
 20 impressions on advertisements appearing on any DoubleClick Ad Exchange
 21 publisher website at any time during the applicable limitations period; (3) who did
 22 not receive refunds or credits from Google even though it withheld payment to that
 23 publisher for those clicks or impressions in connection with any invalid activity or
 24 any breach of contract, including any policy violation; and (4) who opted out of the
 25 arbitration clause of the Terms.

26 (Order Granting in Part and Denying in Part Plaintiffs’ Mot. for Class Cert. at 32 (Dkt. No. 278).)
 27 The order further appointed SCB as the representative of the Class, and Gaw | Poe LLP as class
 28 counsel. (*Id.*) The Court declined to certify Plaintiffs’ proposed DBM and AdX classes. (*Id.*)

29 Following the Court’s ruling on class certification, Plaintiffs filed an unopposed motion
 30 for approval of notice to the litigation class (“Litigation Notice”), which the Court granted on
 31 March 23, 2021. (Dkt. Nos. 305, 308). The Court approved Angeion Group as the Administrator

1 for purposes of sending the Litigation Notice, collecting opt outs, administering the case website,
 2 and tabulating the associated information for reporting to the Court through Class Counsel. (Dkt.
 3 No. 308.) Pursuant to the notice plan, on or about August 12, 2021, Angeion sent notice to the
 4 litigation class, consisting of 651,294 emails and 141,318 mailed postcard notices, which resulted
 5 in 34 opt-outs, as shown in the administrator's report filed October 21, 2021. (Dkt. No. 346-1).

6 **C. Summary Judgment.**

7 On September 23, 2021, the Parties filed cross-motions for partial summary judgment,
 8 which the Court stayed upon being notified of the Parties' agreement to settle the case. (Dkt.
 9 Nos. 334, 338.) As to Plaintiff's class claims, Google contends SCB lacks both Article III and
 10 statutory standing to proceed as the class representative, and that the AdWords Class's claims
 11 should be dismissed in their entirety. (Dkt. No. 334.) The Parties' motions, and Plaintiffs'
 12 motion for class certification before it, were the result of intensive written and oral discovery,
 13 including review and analysis of tens of thousands of documents, among them, large volumes of
 14 highly-detailed, dense, and technical material produced by Defendant, and of initial disclosures,
 15 and interrogatory answers; extensive expert discovery; and over a dozen depositions of the Parties
 16 and their experts. (Gaw Decl. ¶¶ 3, 4, 15.)

17 **D. Settlement.**

18 On February 25, 2022, the Parties attended a mediation session with the Honorable
 19 Jeremy Fogel, Ret. (the "Mediation"). These discussions were successful, and the Parties
 20 executed a binding term sheet memorializing certain material terms of a class settlement made
 21 pursuant to a mediator's proposal. (Fogel Decl. ¶ 4.) The Settlement provides for a Settlement
 22 Fund of \$7 million in non-reversionary monetary relief. (*Id.*; Gaw Ex. A, §§ 1.42, 1.44, 2.4.)
 23 The amount of the settlement measures favorably to the \$7 million in class damages that
 24 Plaintiff's expert had estimated in conjunction with Plaintiff's motion for class certification.
 25 (Gaw Decl. ¶ 17.) It is also within the \$2.7 to \$111 million dollar range that Plaintiff's expert had

26

27

28

1 further calculated in his reports on the merits.² (Gaw Decl. ¶ 17.) And it is a highly favorable
 2 outcome considering the analysis and opinion of Google's expert witness, who has opined that
 3 there was no "credit shortfall" affecting the AdWords Class at all, such that the class is owed \$0.
 4 (*Id.*)

5 The Settlement Agreement provides that proceeds payable to the AdWords Class are net
 6 of (1) the cost of notice and administration (presently estimated at \$217,000); (2) attorney's fees,
 7 costs, and expenses (if approved); and (3) a Service Award to the Class Representative, SCB, not
 8 to exceed \$10,000. (Gaw Decl. ¶¶ 12-14 & Ex. A, §§ 1.24, 1.42, 1.44, 2.4.) Plaintiff and its
 9 counsel Gaw | Poe, whom the Court appointed Class Counsel for the AdWords Class, endorse the
 10 value and reasonableness of this proposed Settlement. (Gaw Decl. ¶¶ 1, 8, 15-19.) Class Counsel
 11 propose to request up to 33% of the Settlement Fund in attorneys' fees for this nearly five-year
 12 litigation, which amount will measure favorably to a lodestar cross-check, even under the now-
 13 historic hourly rates that this Court approved for Gaw | Poe more than two years ago. (Gaw Decl.
 14 ¶ 13; Dkt. No. 281.)

15 **E. Settlement Payments to AdWords Class Members.**

16 The proposed Settlement is to be distributed on a claims-made basis, where AdWords
 17 Class Members are entitled to submit a Claim for a Settlement Payment, either via an online
 18 portal on the Settlement Website, or by printing and submitting by fax or postal mail a hard copy
 19 claim form to the Settlement Administrator. (Gaw Ex. A, §§ 1.7, 1.17, 1.28, 1.30, 1.45, 1.47, 3.)
 20 The Settlement Payment amount for each Claimant who submits a Valid Claim will be calculated
 21 in proportion to that Claimant's AdWords advertising spend on AdX publishers' webpages during
 22 the Class Period as a percentage of the total such spend for all Claimants with Valid Claims.
 23

24 ² Plaintiffs' expert had initially calculated classwide damages of between \$0.278 million to \$7.48
 25 million. (Gaw Decl. ¶ 17.) Based on certain Google interrogatory responses served late in the
 26 discovery period, however, he opined that it might be appropriate to apply a variable multiplier to
 27 his damages calculations, yielding a broad range of possible damages with an increased upper
 28 bound. (*Id.*) Google argued that Plaintiffs' expert's damages estimates were speculative and
 unsupported by Google's data, and that the multiplier Plaintiffs' expert applied to arrive at a
 revised damages range was based on inadvertently incorrect interrogatory responses that Google
 subsequently corrected. (Dkt. Nos. 318, 334, 354, 363, 369.)

1 (Gaw Ex. A, § 2.) In other words, the total spend on AdX publishers' webpages through
 2 AdWords for all Claimants with Valid Claims will be totaled up based on Google's records, and
 3 then each Claimant will receive a share of the Net Settlement Fund that is in equal proportion to
 4 its share of that total. (*Id.*) To ensure that the administrative expense for a given claim does not
 5 exceed the associated Settlement Payment, the Settlement imposes a \$1.00 Settlement Payment
 6 threshold; no Claimant with a Valid Claim shall be entitled to any Settlement Payment that would
 7 be less than \$1.00. (Gaw Ex. A, § 2.4.1.) The Claims Deadline is 60 days after the Notice Date.
 8 (*Id.* at § 1.8.)

9 Claims will be submitted to the Settlement Administrator via a short form (the "Claim
 10 Form") available on the Settlement Website, which asks the Claimant a few simple questions, *i.e.*,
 11 the AdWords Class Member's contact information, identification number assigned to the
 12 AdWords Class Member by Angeion, and preferred payment method. (Weisbrot Decl. ¶¶ 17-23
 13 & Exs. B-D.) To minimize administrative costs, the default payment method is to be electronic
 14 (through ACH, Zelle, Venmo, or PayPal), but Class Members may also request payment by
 15 check. (Gaw Decl. ¶ 9 & Ex. A at § 2.4.2.) Claimants may submit the Claim Form online,
 16 through the Settlement Website, or can download the Claim Form and return a hard copy to the
 17 Settlement Administrator via fax or postal mail. (Weisbrot Decl. ¶¶ 17-23 & Exs. B-D.) As a
 18 fraud-protection measure, Claimants will be required to certify that they did not "intentionally
 19 violate Google's policies or intentionally cause invalid clicks with regard to the funds that Google
 20 withheld in connection with the Settlement Class Member's AdWords account." (Gaw Ex. A,
 21 § 3.1.2.)

22 Due to the distribution the Parties and Settlement Administrator have devised, the
 23 Settlement Administrator does not anticipate much if any residuum in the Net Settlement Fund
 24 after distribution. (Weisbrot Decl. ¶¶ 12, 25-26; Gaw Decl. ¶ 11.) Should any amount remain,
 25 however, it will be donated to Public Justice, a worthy *Cy Pres* Recipient. (Gaw Decl. ¶ 11 & Ex.
 26 A, §§ 1.12, 2.4.) Public Justice has national reach and a reputation for consumer protection.
 27 (Gaw Ex. B.)

28

1 **F. Notice and Objection Procedures, and Renewed Opt-Out Opportunity.**

2 The Parties' Settlement provides for robust direct email and postcard notice to the same
 3 group of AdWords Class Members as to whom the Settlement Administrator gave court-approved
 4 Litigation Notice on or about August 12, 2021, plus any new Class Members who may have
 5 joined between that date and the date of the Settlement. (Gaw Ex. A, § 4.2; Weisbrot Decl. ¶ 13;
 6 Dkt. Nos. 305, 305-1, 308.)

7 The Email Notice will summarize the AdWords class's claims and provide a link to the
 8 Settlement Website where AdWords Class Members can submit a Claim Form, Opt-Out Form, or
 9 Objection, learn more about the case, and review the long-form settlement notice and the
 10 Settlement Agreement. (Gaw Ex. A, § 4.2; Weisbrot Decl. ¶¶ 22-23 & Exs. B-D.) The
 11 Settlement Website will also highlight important deadlines, make a Claim Form available for
 12 download, provide contact information for the Settlement Administrator, and host key case
 13 documents. (Gaw Ex. A, §§ 1.47, 4.4; Weisbrot Decl. ¶¶ 22-23 & Exs. B-D.)

14 As was done with the Litigation Notice, Postcard Notice will be sent by U.S. Mail to those
 15 AdWords Class Members as to whom Direct Email Notice cannot be made. (Gaw Ex. A, § 4.3;
 16 Weisbrot Decl. ¶¶ 18-21 & Ex. C.) The Settlement Administrator will also serve notice of the
 17 Settlement and other required documents on relevant government officials in accordance with the
 18 Class Action Fairness Act. (Gaw Ex. A, § 4.6.)

19 Finally, as contemplated in Rule 23(e)(4), the Email notice, postcard notice, and long-
 20 form notice available on the Settlement Website will inform class members of their renewed
 21 opportunity to exclude themselves from the class. (Weisbrot Exs. B-D.)

22 **G. Content of Notice and Release of Claims.**

23 The Website Notice (*i.e.*, the long-form notice) describes the material terms of the
 24 Settlement and the procedures that AdWords Class Members must follow in order to submit
 25 Claims. (Weisbrot Ex. D.) It also describes the procedures for AdWords Class Members to
 26 object to the Settlement, or exercise their renewed right to opt out of the Settlement. (*Id.*) The
 27 short-form notices (*i.e.*, the email and postcard notices) provide a summary of the foregoing, and

1 direct AdWords Class Members to the Settlement Website for more information. (Weisbrot Exs.
 2 B-C.)

3 If the Court grants final approval of the Settlement, then the Releasing Named Plaintiff
 4 and Releasing Class Members who did not exclude themselves from the AdWords Class in
 5 response to the Litigation Notice or from the Settlement in response to the Settlement Notice will
 6 be deemed to have released all Released Claims against the Releasees. (Gaw Ex. A, §§ 1.36,
 7 6.2.) The Released Claims are those that “arise out of or relate to the allegations in the operative
 8 complaint and that occurred during the AdWords Class Period, including, but not limited to, those
 9 relating to any AdWords Class Member whose AdWords account was not refunded or credited
 10 for Invalid Traffic.” (Gaw Ex. A, § 1.36.)

11 **H. Service Award and Attorney’s Fees, Costs, and Expenses.**

12 The Parties have agreed that SCB may apply for a Service Award of no more than
 13 \$10,000. (Gaw Decl. ¶ 12 & Ex. A, §§ 1.40, 9.) Plaintiff SCB has assisted counsel with the
 14 preparation of complaints in this matter; worked with counsel on initial disclosures; consulted
 15 with counsel as requested and on its own initiative; monitored the proceedings on its own behalf
 16 and on behalf of the class; worked with counsel to prepare, review, and submit declarations in
 17 support of its claims and those of the AdWords Class; answered interrogatories and responded to
 18 requests for production, including by gathering and producing documents, in consultation with
 19 counsel; prepared for and sat for deposition; and attended the Mediation. (Gaw Decl. ¶ 12.) SCB
 20 will be entitled to the same Settlement benefits, subject to the same conditions, as any other
 21 AdWords Class Member. (*Id.* at ¶ 9.)

22 As for Plaintiff’s attorneys’ fees, costs, and expenses, the Settlement Agreement
 23 contemplates that Plaintiff will make a request for these by motion. (*Id.* ¶ 13.) Google reserves
 24 the right to oppose Plaintiff’s motion. (*Id.*) Plaintiff plans to request 33% of the Settlement Fund
 25 as fees. Plaintiff will file that motion within 30 days after the Notice Date, and the Settlement
 26 Administrator will host a copy of that motion on the Settlement Website, to allow AdWords Class
 27 Members to review it well in advance of the Objection and Exclusion Deadline (60 days after the
 28

1 Notice Date). (Gaw Ex. A, § 8.) Plaintiff also expects to request reimbursement of costs and
 2 expenses in the approximate sum of \$825,000. (Gaw Decl. ¶ 13.)

3 **II. ARGUMENT**

4 **A. Legal Standard.**

5 Settlements are to be encouraged in class-action lawsuits. *See, e.g., Free Range Content,*
 6 *Inc. v. Google, LLC*, No. 14-CV-02329-BLF, 2019 WL 1299504, at *8 (N.D. Cal. Mar. 21, 2019)
 7 (“[T]here is a strong judicial policy that favors settlements, particularly where complex class
 8 action litigation is concerned.”) (quoting *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015)).
 9 However, under Federal Rule of Civil Procedure 23(e) the “claims, issues, or defenses of a
 10 certified class—or a class proposed to be certified for purposes of settlement—may be settled . . .
 11 only with the court’s approval.” Fed. R. Civ. P. 23(e). “The purpose of Rule 23(e) is to protect
 12 the unnamed members of the class from unjust or unfair settlements affecting their rights.” *In re*
 13 *Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008). Accordingly, before a district court
 14 approves a class action settlement, it must conclude that the settlement is “fundamentally fair,
 15 adequate and reasonable.” *In re Heritage Bond Litig.*, 546 F.3d 667, 674–75 (9th Cir. 2008).
 16 Approval of a class-action settlement proceeds through two stages: preliminary approval and
 17 final approval (with notice in between). *See Manual for Complex Litigation*, § 13.14, at 173
 18 (4th ed. 2004).

19 Under this Circuit’s precedent following *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th
 20 Cir. 1998), courts may preliminarily approve a settlement and notice plan to the class if the
 21 proposed settlement: (1) appears to be the product of serious, informed, non-collusive
 22 negotiations; (2) does not grant improper preferential treatment to class representatives or other
 23 segments of the class; (3) falls within the range of possible approval; and (4) has no obvious
 24 deficiencies. *See In re Lenovo Adware Litig.*, No. 15-MD-02624-HSG, 2018 WL 6099948, at *7
 25 (N.D. Cal. Nov. 21, 2018) (citation omitted); *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d
 26 1078, 1079 (N.D. Cal. 2007). In determining whether to grant approval, the Ninth Circuit “has
 27 long deferred to the private consensual decision of the parties” to settle. *Rodriguez v. West Pub’g*
 28 *Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). “[T]he court’s intrusion upon what is otherwise a

private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Hanlon*, 150 F.3d at 1027 (citation omitted).

The *Hanlon* factors largely overlap with the factors specified in the 2018 amendments to Rule 23, which are now set forth in subsection (e)(2) of that rule. *See Perks v. Activehours, Inc.*, No. 5:19-CV-05543-BLF, 2021 WL 1146038, at *4 (N.D. Cal. Mar. 25, 2021). Under that subsection, a court is to consider the following factors in assessing whether a proposed class settlement is “fair, reasonable, and adequate”:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

For ease of review, we consider the factors under the rubric used in the Rule.

B. The Parties’ Settlement Meets the Standard for Preliminary Approval.

1. SCB and Class Counsel have adequately represented the class.

In granting class certification, the Court explained that “Gaw Poe are able attorneys who have litigated this action vigorously on behalf of the class.” (Dkt. No. 288 at 21.) The Court further found an absence of any conflict between Gaw | Poe and the AdWords class. (*Id.*) In the

1 two years since that order was written, Gaw | Poe has continued to vigorously represent the
 2 interests of the AdWords class, through continuing to pursue discovery in support of the class's
 3 claims against Google, moving for and opposing summary judgment, and by fronting hundreds of
 4 thousands of dollars from its own pockets to fund class notice, discovery expenses, and expert
 5 witness fees. (Gaw Decl. ¶¶ 3-4, 13, 15-16.) In short, Gaw | Poe's vigor in support of the class's
 6 claims has continued unabated since the Court's prior finding.

7 The Court likewise found that SCB had fulfilled its role as an adequate representative of
 8 the AdWords class. (Dkt. No. 288 at 19.) In support of Plaintiff's motion for class certification,
 9 SCB's principal Ramzy Rahib submitted a declaration describing how SCB came to be a named-
 10 plaintiff in this litigation, and the role and efforts he has undertaken in furtherance of that
 11 responsibility. (Dkt. No. 205-2 ¶¶ 12-14; *see also supra* at § I(H) (describing, in conjunction with
 12 the requested service award, Mr. Rahib and SCB's contributions to the class's goals).) There has
 13 been relatively little need for further contributions from SCB between the time of class
 14 certification and the present other than to participate in the mediation on the class's behalf, but
 15 suffice it to say, nothing has happened between then and now that could call SCB's adequacy into
 16 question.

17 **2. The proposed Settlement was negotiated at arm's length.**

18 As this Court recently noted in *Perks v. Activehours, Inc.*, 2021 WL 1146038, at *4, the
 19 "arm's length" inquiry under Rule 23(e)(2)(B) overlaps with the *Hanlon* factor requiring a court
 20 to ensure that "the agreement is not the product of fraud or overreaching by, or collusion between,
 21 the negotiating parties . . ." 150 F.3d at 1027 (internal quotes and citations omitted). As set forth
 22 above, the Settlement was achieved only after extensive written and oral discovery, including
 23 review and analysis of tens of thousands of documents and of initial disclosures and interrogatory
 24 answers, much with the aid of consulting experts, and over a dozen depositions of the parties and
 25 their experts; three motions to dismiss; a motion for class certification; and cross-motions for
 26 summary judgment. (Gaw Decl. ¶¶ 3-4, 13, 15-16.) Under such circumstances, where the
 27 settlement is the result of long, hard-fought, adversarial work by capable counsel, the Court
 28 affords a proposed class settlement a "presumption of fairness, adequacy, and reasonableness."

1 See *Free Range Content*, 2019 WL 1299504, at *6; *Manual for Complex Litigation* (Third) §
 2 30.42 (1995).

3 The involvement of a neutral mediator such as Judge Fogel additionally supports this
 4 factor. See, e.g., *Rabin v. PricewaterhouseCoopers LLP*, No. 16-CV-02276-JST, 2021 WL
 5 837626, at *5 (N.D. Cal. Feb. 4, 2021) (“[T]he involvement of a neutral ... mediator or facilitator
 6 in [] negotiations may bear on whether they were conducted in a manner that would protect and
 7 further the class interests.”) (quoting Advisory Committee Notes, Fed. R. Civ. P. 23, subdiv.
 8 (e)(2) (2018)); *Edwards v. Nat'l Milk Producers Fed'n*, No. 11-CV-04766-JSW, 2017 WL
 9 3623734, at *5 (N.D. Cal. June 26, 2017), aff'd sub nom. *Edwards v. Andrews*, 846 F. App'x 538
 10 (9th Cir. 2021) (arms' length negotiations presided over by a neutral mediator supported
 11 settlement approval); *Shahar v. Hotwire, Inc.*, No. 12-CV-06027-JSW, 2014 WL 12647737, at *2
 12 (N.D. Cal. July 25, 2014). Indeed, Judge Fogel attests that, in his opinion, the proposed
 13 Settlement reached at mediation is fair, adequate, and reasonable. (Fogel Decl., ¶¶ 3-5.)

14 **3. The relief provided for the class is adequate.**

15 To evaluate whether the settlement is within the range of possible approval, “courts
 16 primarily consider plaintiffs’ expected recovery balanced against the value of the settlement
 17 offer.” *In re Tableware*, 484 F. Supp. 2d at 1080. It is “well-settled law that a proposed
 18 settlement may be acceptable even though it amounts to only a fraction of the potential recovery
 19 that might be available to the class members at trial.” *In re: Cathode Ray Tube (Crt) Antitrust*
 20 *Litig.*, No. C-07-5944 JST, 2016 WL 3648478, at *7 (N.D. Cal. July 7, 2016), dismissed sub
 21 nom. *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 16-16368, 2017 WL 3468376 (9th Cir.
 22 Mar. 2, 2017).

23 Given the 4+ years of pre-settlement discovery and litigation, Plaintiff’s counsel was well-
 24 situated to evaluate the strength and weakness of Plaintiff’s case. (Gaw Decl., ¶¶ 3-4, 13, 15-16.)
 25 As noted, the \$7 million settlement value Class Counsel obtained mirrors the amount of class
 26 damages that their expert witness estimated at the class certification stage and is well within the
 27 broad range of possible damages he opined in his merits report. (*Supra* at § I(D).) Additionally,
 28 and as explained above, Google’s expert maintained that the data showed that there was no

1 “credit shortfall” affecting the AdWords Class at all, such that the class was owed \$0, and that the
 2 multiplier on which Plaintiff’s expert relied to provide his revised damages range was not
 3 supported by Google’s supplemental discovery responses. (*Id.*) Especially where a class may
 4 “risk getting nothing,” courts routinely approve settlements where the settlement value is a small
 5 portion of what plaintiffs allege is the defendant’s total potential exposure. *In re Omnitvision*
 6 *Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008); *see also, e.g., Perkins v. LinkedIn*
 7 *Corp.*, No. 13-cv-04303-LHK, 2016 WL 613255, at *5 (N.D. Cal. Feb. 16, 2016) (approving \$13
 8 million settlement where the total exposure exceeded \$1.6 billion because this was “a fair and
 9 adequate compromise in light of significant risks faced by the class”); *Destefano v. Zynga, Inc.*,
 10 No. 12-cv-04007-JSC, 2016 WL 537946, at *11 (N.D. Cal. Feb. 11, 2016) (“it is well-settled law
 11 that a proposed settlement may be acceptable even though it amounts to only a fraction of the
 12 potential recovery that might be available to the class members at trial”); *Fraley v. Facebook,*
 13 *Inc.*, 966 F. Supp. 2d 939, 943-44 (N.D. Cal. 2013) (the adequacy of [the] settlement should not
 14 be evaluated against some theoretically available judgment, but against what plaintiffs could
 15 reasonably expect to recover”).

16 We now turn to the individual factors identified in Rule 23(e)(2)(C).

17 **i. The costs, risks, and delay of trial and appeal.**

18 The \$7 million settlement fund is a fair and admirable result in light of the risks and delay
 19 posed by further trial proceedings and a potential appeal. *See, e.g., Hanlon*, 150 F.3d at 1026
 20 (courts should consider “the risk, expense, complexity, and likely duration of further litigation”
 21 when assessing whether a settlement is fair and reasonable). The AdWords class faced a distinct
 22 risk that the Court may have ruled in Google’s favor on its pending summary judgment motion.
 23 (See Dkt. No. 333-3 (Google MSJ), at pp. 19-32.) Even short of an outright loss at summary
 24 judgment, the Class faced a distinct risk that its damages would be severely limited. Google
 25 forcefully argued that the Terms included a contractual limitation provision that limited class
 26 recovery to a 60-day claim period instead of the four-year limitations period advocated by Class
 27 Counsel. (*Id.*) While Plaintiff disagreed based on its reading of the provision and evidence
 28 obtained during discovery, as well as its argument that the limitation of liability is unenforceable,

1 it was nevertheless imperative for Plaintiff and Class Counsel to take those risks into account in
 2 arriving at a mediated settlement. (Gaw Decl. ¶¶ 16-19.)

3 Even assuming that the class would have overcome the several risks presented by
 4 summary judgment, there was the additional risk that the jury might have either (A) sided with
 5 Google on the merits, or (B) awarded a smaller amount in damages than the \$7 million all-cash
 6 deal that Class Counsel and SCB obtained (perhaps all the way down to the \$0 damages amount
 7 opined by Google's expert), especially since the overwhelming majority of the estimated class
 8 damages was based upon the use of a multiplier derived from what Google contends were
 9 inadvertently erroneous interrogatory responses. The Court denied Plaintiffs' motion to exclude
 10 the use of Google's supplemental interrogatory responses (*see* Dkt. No. 354), which left
 11 Plaintiffs' damages calculations especially vulnerable should a jury believe Google that its initial
 12 responses should be disregarded. And even had the class prevailed at trial, it still would have
 13 faced a risky road in proceeding through post-trial motions and an appeal, all of which likely
 14 would have delayed compensation to the class for two years or more. In sum, the compromise
 15 that Class Counsel and SCB ably reached on the class's behalf can hardly be second-guessed by
 16 anyone familiar with this litigation.

17 **ii. The method of distributing relief and processing claims.**

18 Class Counsel and SCB propose a distribution method that is as equitable as possible. As
 19 described above, *supra* at § I(E), the proposed settlement would distribute to each Claimant with
 20 a Valid Claim a share of the Net Settlement Fund based on its AdWords advertising spend on
 21 AdX publishers' webpages during the relevant limitations period, in proportion to the total such
 22 spend for all Claimants with Valid Claims. In this way, class members who spent greater sums
 23 through the relevant advertising platform (and thus would have been expected to have been
 24 deprived of a larger amount in refunds under Plaintiff's theory) will obtain a greater share, while
 25 class members who suffered a smaller injury (under Plaintiff's theory) will obtain a
 26 proportionately smaller share.³ Courts have repeatedly approved analogous settlement

27 ³ We note that Google and its counsel should be commended for agreeing to this structure, which
 28 would not be possible without Google's agreement to undertake the data-intensive task of
 compiling spend-data for each Claimant.

1 distribution methods. *See, e.g., Baird v. BlackRock Institutional Tr. Co., N.A.*, No. 17-CV-01892-
 2 HSG, 2021 WL 5991060, at *5 (N.D. Cal. July 12, 2021) (approving allocation plan that provided
 3 for settlement payments in proportion to the size of class members' investment accounts);
 4 *Downey Surgical Clinic, Inc. v. Optuminsight, Inc.*, No. CV09-5457 PSG (JCX), 2016 WL
 5 5938722, at *8 (C.D. Cal. May 16, 2016) (settlement allocation based on roughly proportionate
 6 delta between each class member's billed charges as compared to reimbursement shortage had
 7 rational basis).

8 While in some sense it might be deemed more "equitable" to distribute a share of the Net
 9 Settlement Fund to every class member on an automated basis (without requiring them to submit
 10 claims) such a structure is not feasible here because (A) Google does not have a physical address
 11 for all members of the class such that the Settlement Administrator could send them a check, (B)
 12 the addresses it does have are up to nine years old given the beginning of the limitations period,
 13 and (C) neither Class Counsel nor Google has electronic payment information for the class
 14 members. (Gaw Decl. ¶ 10.) In other words, an automatic distribution method would be arbitrary
 15 because it would fail to reach an untold number of class members through no fault of their own,
 16 and the "residue" remaining in the Net Settlement Fund after the distribution attempt would likely
 17 be very high. For that reason, it is far more efficient and equitable to distribute the Net
 18 Settlement Fund to those class members who affirmatively make a claim on it.

19 Importantly, while the proposed method of distribution could be colloquially described as
 20 a "claims-made settlement," it is not one in which the defendant's exposure is limited by the
 21 number of claims made, or one in which unclaimed amounts will revert to the defendant or the
 22 plaintiff's counsel—characteristics that are often considered "'indicia of collusion.'" *In re*
 23 *Myford Touch Consumer Litig.*, No. 13-CV-03072-EMC, 2018 WL 10539266, at *1 (N.D. Cal.
 24 June 14, 2018) (quoting 4 Newberg on Class Actions § 13:9 (5th ed. 2018)); *see also Kakani v.*
 25 *Oracle Corp.*, No. 06-cv-06493-WHA, 2007 WL 1793774, at *5 (N.D. Cal. June 19, 2007).
 26 Rather, it is "claims-made" only in the sense that class members who desire to make a claim on
 27 the Net Settlement Fund must identify themselves and provide appropriate payment information,
 28 out of pragmatic necessity. Furthermore, the claims process is designed to be as minimally

1 burdensome as possible. The only thing that a Claimant needs to do is input the ID# it is assigned
 2 by the Settlement Administrator into the online-portal found on the class website, and then input
 3 any updated contact information, and identify its preferred form of payment. (See Weisbrot Decl.
 4 ¶¶ 22-23 & Exs. B-D; Gaw Ex. A, § 3.) Any class member who cannot find its ID# (for any
 5 reason) can alternatively contact the Settlement Administrator to find out whether it is an eligible
 6 member of the class, and proceed to make a claim if so. (Weisbrot Ex. D.)

7 Finally, so that the cost of administering a claim does not exceed that claim's value, the
 8 proposed settlement would impose a minimum \$1.00 threshold on Settlement Payments. (Gaw
 9 Decl. ¶ 9 & Ex. A, § 2.4.1.) Minimum thresholds for class distributions are routinely deemed
 10 appropriate. *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. 06-cv-4333-
 11 PJH, 2013 WL 12333442, at *81 (N.D. Cal. Jan. 8, 2013) ("The concept of setting a *de minimis*
 12 payment amount below which checks will not be issued has long been accepted as a feature of
 13 class action distributions.") (collecting citations); *Redwen v. Sino Clean Energy, Inc.*, 11-cv-
 14 3936-PA-(SSX), 2013 WL 12303367, at *8 (C.D. Cal. July 9, 2013) (recognizing that *de minimis*
 15 payment threshold preserved settlement fund from being overburdened and benefited class as a
 16 whole because "it saves the settlement fund from being depleted by the administrative costs").

17 iii. The terms and timing of the proposed attorneys' fees award.

18 Pursuant to the Settlement Agreement and as explained in the Website Notice (*i.e.*, the
 19 long-form notice) to the Class, Class Counsel and SCB will file a motion for attorneys' fees and a
 20 "service award" at least 30 days prior to the deadline for submitting claims, objections, and opt-
 21 out requests, and the Settlement Administrator will promptly make that motion available for
 22 review on the Settlement Website. (Gaw Ex. A, § 8.2; Weisbrot Ex. D.) The Website Notice
 23 further explains that Class Counsel will seek up to 33% of the Settlement Fund for attorneys' fees
 24 for this long-fought litigation, which will be more than supported by a lodestar cross-check, even
 25 at the hourly rates this Court approved for Class Counsel more than two years ago. (Weisbrot Ex.
 26 D; Gaw Decl. ¶ 13.) SCB and Class Counsel respectfully submit that 33% is fair in light of the
 27 years they spent in this hard-fought litigation against formidable opposing counsel and their
 28 formidable client, and the significant result achieved for the proposed AdWords Class. *See*

1 *Rodriguez v. Nike Retail Servs., Inc.*, No. 14-CV-01508-BLF, 2022 WL 254349, at *6 (N.D. Cal.
 2 Jan. 27, 2022) (awarding class counsel 33% of an \$8.5 million settlement, which translated to a
 3 lodestar of 1.17). Google has reserved the right to oppose that motion for any reason, at its
 4 discretion. (Gaw Decl. ¶ 13 & Ex. A, § 8.1.)

5 Plaintiffs' motion for fees will also seek to recover that portion of Class Counsel's out-of-
 6 pocket costs properly attributable to their pursuit of this outcome for the AdWords Class, which
 7 are expected to be approximately \$825,000. (Gaw Decl. ¶ 13.) By far the largest component of
 8 those costs were expert fees, which were necessarily and reasonably incurred given the multiple
 9 expert reports necessary to achieve this result, and the extremely data-intensive subject matter of
 10 those reports. (*Id.*) The second largest component involved issuing Litigation Notice to the
 11 certified litigation class, which amounted to approximately \$97,000. (*Id.*) As will be seen, none
 12 of those out-of-pocket costs were avoidable in achieving this result.

13 Furthermore, the finality of the Settlement is specifically untethered to Class Counsel's
 14 right to attorneys' fees, and the amount of those fees. In other words, neither SCB nor Class
 15 Counsel can seek to terminate the Settlement based on the outcome of the Court's ruling on the
 16 fee motion or Service Award. (Gaw Ex. A, § 7.6.)

17 Regarding the timing of any fee award, the Settlement provides that it becomes payable
 18 within 15 days after the date the Final Approval Order is entered. (*Id.* at § 8.4.)

19 **iv. Statement of agreements required to be identified.**

20 At the February 25, 2022 mediation with Judge Fogel, in addition to reaching settlement
 21 as to the AdWords class, the parties agreed to settle the remaining individual claims of AdTrader,
 22 Inc., as well as Gaw | Poe's claim for attorneys' fees on the "common fund" created by Google's
 23 decision to issue \$65.7 million in refunds to advertisers on Google's DBM advertising platform.
 24 (Gaw Decl. ¶¶ 21-22.) As the Advisory Committee notes to Rule 23(e)(2) explain, it is important
 25 for the parties to identify "related undertakings," out of concern that they "may have influenced
 26 the terms of the settlement by trading away possible advantages for the class in return for
 27 advantages for others." Fed. R. Civ. P. 23(e)(2), Ad. Comm. Notes (2018). The Committee notes
 28 further recognize, however, that this obligation is tempered by "concerns of confidentiality"—an

1 issue that is particularly presented by the AdTrader settlement, given that AdTrader is neither a
 2 class representative nor even a member of the AdWords Settlement Class.

3 Here, the two additional separate agreements the parties reached did not trade away any
 4 advantages for the class. To avoid any potential for a conflict of interest in mediating AdTrader's
 5 individual claims simultaneously with the claims of the AdWords Class, Gaw | Poe insisted that
 6 AdTrader obtain separate counsel for the mediation. (Gaw Decl. ¶ 22.) It did so by
 7 independently finding and retaining a highly experienced attorney named Sven Reithmueller, who
 8 had previously worked as an associate for Cleary Gottlieb and Sullivan & Cromwell, and later
 9 been a partner at Foley & Larder and Pepper Hamilton.⁴ Mr. Reithmueller independently
 10 prepared and submitted to Judge Fogel his own mediation statement on behalf of AdTrader. (*Id.*)
 11 Furthermore, during the mediation itself, Mr. Reithmueller and AdTrader negotiated separately
 12 with Google through Judge Fogel. (*Id.*)

13 Nor can Gaw | Poe be said to have benefitted at the expense of the class. Between the fees
 14 and expense reimbursements the firm is to receive from AdTrader's separate settlement and the
 15 compromise of its own fees claim (*i.e.*, Gaw | Poe's contention that the Court erred in awarding it
 16 just \$727,503.74 in conjunction with the \$65.7 million "common fund" created by Google's
 17 refunds to DBM advertisers (Dkt. No. 289 at 18)),⁵ Gaw | Poe will receive a total of only \$1.2
 18 million in combined fees and expense reimbursements, inclusive of and not in addition to the
 19 approximately \$730,000 the Court previously awarded. (*Id.*; Gaw Decl. ¶¶ 23-24.) Even setting
 20 aside the possibility that Gaw | Poe would have received a far greater amount from a successful
 21 appeal of the Court's prior DBM fees order, assuming that the firm would have been entitled to
 22 10% California prejudgment interest between the date that the \$727,503.74 amount was fixed in
 23 March 2020 and the date final judgment would likely enter (year-end of 2022), Gaw | Poe would

24
 25
 26⁴ See <https://www.linkedin.com/in/sven-reithmueller-3556931/details/experience/>.

27⁵ The Court will recall that Gaw | Poe LLP took an appeal from the Court's order granting in part
 28 its fees claim to challenge the amount awarded by the Court, but the Ninth Circuit dismissed that
 appeal for lack of appellate jurisdiction, holding that the appeal must await entry of final
 judgment in this case. (See Dkt. No. 329 (9th Cir. opinion).)

1 have been entitled to \$921,503 in connection with only its DBM fees claim, win or lose.⁶
 2 Accordingly, a \$1.2 million compromise of Gaw | Poe's DBM fees claim (combined with its
 3 share of fees and expenses from the separate AdTrader settlement) was eminently reasonable, and
 4 cannot be thought to have "trad[ed] away possible advantages for the class." Fed. R. Civ. P.
 5 23(e)(2), Ad. Comm. Notes (2018).

6 A further assurance that the AdTrader and Gaw | Poe settlements did not come at the
 7 expense of the class is the fact that the three settlements were the result of a "mediator's
 8 proposal," which Judge Fogel proposed to "achiev[e] a global settlement." (Fogel Decl. ¶ 4.)

9 **4. The proposed settlement treats class members equitably relative to each
 10 other.**

11 The Settlement does not grant preferential treatment to Class Representative SCB or any
 12 segment of the AdWords Class. As explained in the Website Notice, and as described above, the
 13 Settlement provides cash relief to all eligible Class Members on a fair and proportionate claims-
 14 made basis, and SCB is entitled to make a claim just like any other class member. (Gaw Decl. ¶ 9
 15 & Ex. A, §12.) Under the Agreement, there is no biased treatment of AdWords Class Members
 16 or segments of the class, as each AdWords Class Member with a Valid Claim will receive a
 17 Settlement Payment proportionate to its AdWords spend through the AdX platform during the
 18 class period. (*Id.*) All AdWords Class Members, including the Class Representative SCB, are
 19 treated equally under the Settlement Agreement.

20 As for the proposed Service Award to SCB, \$10,000 is an appropriate amount considering
 21 the time and attention that SCB has devoted to this matter. *See supra* at § I(H) (describing SCB's
 22 work in support of this case); *see also, e.g., See, e.g., Parker v. Cherne Contracting Corp.*, No.
 23 18-CV-01912-HSG, 2021 WL 3209825, at *5 (N.D. Cal. July 29, 2021) (considering distribution
 24 of settlement funds and proposed service award to class representative in evaluating preferential
 25 treatment factor); *Birch v. Off. Depot, Inc.*, 06-CV-1690 DMS (WMC), 2007 WL 9776717, at *2
 26 (S.D. Cal. Sept. 28, 2007) (\$15,000 and \$10,000 service awards awarded to class representatives
 27 were "well within amounts awarded by courts for efforts by named representative plaintiffs that

28 ⁶ 10% interest would translate to \$72,750 per year, or \$6,062 per month for 32 months.

1 lead to successful resolution on behalf of the class"); *McDonald v. CP OpCo, LLC*, No. 17-CV-
 2 04915-HSG, 2019 WL 2088421, at *8 (N.D. Cal. May 13, 2019) (service award of twice the
 3 presumption of \$5,000 was fair and reasonable considering plaintiff's participation).

4 Regarding the possibility of *cy pres* distributions, the Ninth Circuit has stated that “[t]he
 5 *cy pres* doctrine allows a court to distribute unclaimed or non-distributable portions of a class
 6 action settlement fund to the ‘next best’ class of beneficiaries.” *Nachsin v. A.O.L., LLC*, 663 F.3d
 7 1034, 1036 (9th Cir. 2011) (citation omitted)). Here, as noted, there is unlikely to be much if any
 8 residue in the Net Settlement Fund due to the distribution process the parties have agreed to.
 9 (*Supra* at § I(E).) If any amount remains, however, it will not revert to Google, SCB, or Class
 10 Counsel, but will instead be turned over to Public Justice as the *Cy Pres* Recipient here. (Gaw
 11 Decl. ¶ 11 & Ex. B.)

12 **C. The Court Should Approve the Proposed Class Notice.**

13 Rule 23(e)(1)(B) requires the court to “direct notice in a reasonable manner to all class
 14 members who would be bound by the proposal.” *See also Manual for Complex Litig. (Fourth)*, §
 15 21.312, at 293.

16 Here the Settlement Administrator has devised an intensive and best-notice-practicable
 17 Settlement Notice program that entails direct email notice to the AdWords Class Members;
 18 Supplemental Postcard Notice; and a Settlement Website. (*See* Weisbrot Decl. ¶¶ 13-26 & Exs.
 19 B-D; Gaw Ex. A.)

20 Direct notice by email (followed by postcard notice for undeliverable emails) referring
 21 class members to a settlement website is widely accepted as reasonable for Rule 23 purposes—
 22 this Court and others in this District have approved nearly identical notice processes numerous
 23 times. *See, e.g., Free Range Content, Inc. v. Google, LLC*, No. 14-CV-02329-BLF, 2019 WL
 24 1299504, at *3 (N.D. Cal. Mar. 21, 2019) (notice to Google AdSense publisher settlement class
 25 members sent by direct email, and supplemental postcard notice if the email notice was
 26 undeliverable and Google knew the member’s physical address); *Taylor v. Shutterfly, Inc.*, No.
 27 5:18-CV-00266-BLF, 2021 WL 5810294, at *2 (N.D. Cal. Dec. 7, 2021) (Angeion Group
 28 administered direct email notice, followed by postcard notice as necessarily and possible,

referring class members to settlement website); *In re Nexus 6P Prod. Liab. Litig.*, No. 17-CV-02185-BLF, 2019 WL 6622842, at *3 (N.D. Cal. Nov. 12, 2019) (email notice followed by mail notice to each individual for whom the email notice failed where physical address information available, along with dedicated settlement website); *Carlotti v. ASUS Computer Int'l*, No. 18-CV-03369-DMR, 2020 WL 3414653, at *3 (N.D. Cal. June 22, 2020).

As for the substance of the notice, notice should inform settlement class members of the “essential terms” of an agreement, including the benefits it provides; advise of other pertinent information, including as to attorneys’ fees; and describe pertinent procedural matters. *Manual for Complex Litig. (Fourth)*, § 21.312, at 295 (listing elements). Here, the Notice forms attached to the Settlement Administrator’s declaration satisfy these requirements. (See Weisbrot Exs. B-D.) The Notice program and documents are designed to afford notice in a comprehensive and reasonable manner. Plaintiff respectfully asks the Court to approve them.

D. The Court Should Set a Schedule Toward Final Approval of the Parties' Settlement.

Finally, if the Court grants preliminary approval as described herein, Plaintiff requests that the Court adopt the further schedule set forth above and in Plaintiff's proposed order that accompanies this motion.

CONCLUSION

19 For the foregoing reasons, Plaintiff respectfully asks that the Court grant preliminary
20 approval of the Parties' Settlement, and set a schedule for final approval proceedings.

22 || Dated: April 28, 2022

GAW | POE LLP

By

**Randolph Gaw
Class Counsel**